FILED

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 685

MONAMOTOR OIL COMPANY, APPELLANT,

vs.

RAY E JOHNSON, TREASURER OF THE STATE OF IOWA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

STATEMENT AS TO JURISDICTION.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 555

MONAMOTOR OIL COMPANY, APPELLANT,

vs.

RAY E JOHNSON, TREASURER OF THE STATE OF IOWA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

STATEMENT OF JURISDICTION IN CONFORMITY TO RULE XII OF THE SUPREME COURT OF THE UNITED STATES.

This is an appeal from the final hearing before a three-judge court and its refusal to grant injunction against officers of the State of Iowa, enjoining them from enforcing the gasoline tax statutes of Iowa as against the complainant, MonaMotor Oil Company, upon the ground of unconstitutionality of such statutes, and the further ground of the unconstitutional method of enforcement of the same by the officers of the State of Iowa.

The case is one brought under Section 266 of the Judicial Code, and a restraining order was issued and an interlocutory injunction was asked and pressed.

The statutory provisions believed to sustain the appellate jurisdiction of this Court are Sections 266 and 238 of the Judicial Code.

It was claimed in the trial court, and will be claimed on appeal, that the statutes of the State of Iowa, in their relation to the plaintiff, MonaMotor Oil Company, are in contravention of the interstate commerce clauses of the Constitution of the United States, and the levying of the tax constitutes a direct burden on interstate commerce, and that such statutes are in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States and deny to the MonaMotor Oil Company the equal protection of the law, and take its property without due process of law.

The statutes of the State of Iowa which are claimed to be unconstitutional and void, and the enforcement of which is claimed to be in an unconstitutional manner, are as follows:

Chapter 251-A1, Code of Iowa, 1927, is as follows:

Gasoline License Tax.

5093-*a*1. Amount of Fee.—A license fee of two cents per gallon or fraction of a gallon is hereby imposed on all gasoline used or otherwise disposed of in this state for any purpose whatsoever. Any person using gasoline within the state shall be liable for the fee herein provided for unless the same shall have been previously paid. License fees shall be collected and disposed of in the manner hereinafter provided. (41 G. A., ch. 6, Sec. 1; 42 G. A., ch. 248, Sec. 1.)

Additional fee of one cent, Sec. 4755-*b*38.

5093-*a*2. Definition of Terms.—The term "distributor" as used in this chapter shall mean any person

who brings into the state or who produces, refines, manufactures or compounds within the state any gasoline to be used within the state or sold or otherwise disposed of by him within the state for use in the state. Provided, however, a person coming into the state traveling by motor vehicle may transport, for his own use, in the ordinary gasoline tank attached to and forming a part of such motor vehicle, not more than twenty gallons of gasoline without being considered a distributor.

The term "person" includes individual, partnership, corporation and association.

The term "treasurer" means the treasurer of the state of Iowa. (41 G. A., ch. 6, Sec. 2.)

5093-*a*3. Sale Price Placard—Misdemeanor—Penalty.—Any person who sells or offers for sale at retail gasoline in this state, shall keep posted in a conspicuous place, most accessible to the public, at his place of business, a placard showing the total sale price per gallon including license fee, of all grades of gasoline sold, said placard to have printed thereon the words "state license fee included."

When quantity discounts of rebates are allowed, such facts shall be shown on the placard in the manner designated by the treasurer of state in regulations promulgated by him. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed one hundred dollars or imprisonment in the county jail for a period of not to exceed thirty days. (41 G. A., ch. 6, Sec. 3; 42 G. A., ch. 248, Sec. 2.)

5093-*a*4. Certificate—License.—Each distributor now engaged in business as herein defined, shall within thirty days after this chapter becomes effective, and every distributor desiring to engage in such business shall, before beginning the sale or manufacture of gasoline in this state, file a duly acknowledged certificate with the treasurer of state on forms prescribed and furnished by him, which shall contain the name

under which such distributor is transacting business within the state of Iowa, and the principal place of business of such distributor. If such distributor is a firm or copartnership, the certificate shall also contain the names and addresses of the several persons constituting the same, and if a corporation or municipal subdivision, the corporate name under which it is authorized to transact business, the names and addresses of its principal officers, resident general or managing agent and attorney in fact.

Each distributor now engaged in business as herein defined, shall, within sixty days after this chapter becomes effective, and any person or persons desiring to engage in such business shall, before beginning the manufacture or sale of gasoline within the state, procure a license from the treasurer of state permitting said distributor to transact said business within the state of Iowa. The treasurer of state, upon application of any person or persons who has filed the required certificate, shall issue such person or persons a license as licensed distributor permitting such person or persons to continue or engage in business as a licensed distributor in the state of Iowa. It shall be unlawful for any distributor to continue or to engage in or to transact the business of a distributor without first having procured a license as required in this section. (41 G. A., ch. 6, Sec. 4; 42 G. A., ch. 248, Sec. 3.)

Referred to in Sec. 5093-*a*7.

5093-*a*5. Reports—Remittances—Rebates—Penalties.—On or before the twentieth day of each calendar month each distributor of gasoline shall file in the office of the treasurer of state, at Des Moines, Iowa, a duly acknowledged report on forms prescribed and furnished by said treasurer, showing the total number of gallons of gasoline imported by him during the preceding calendar month, the date of receipt, unloading point, tank car identification and invoiced gallonage of each and every tank car or other receptacle in which gasoline is imported into the state of Iowa. At

the same time he shall remit to the treasurer the amount of the license fee for such preceding month; provided, however, that in computing said amount a deduction of three per cent of the invoiced gallonage imported may be made for evaporation and loss.

If, after the prescribed license fees are so remitted and paid, any gasoline in the possession of a licensed distributor is destroyed by fire, lightning, storm or accident not caused by the fault of such distributor or any employee thereof, before being sold or used by him, upon proper application therefor and proof of such destruction or loss satisfactory to the treasurer of state the said treasurer is authorized to certify to the amount of the license fees so paid thereon to the auditor of state as a refund. The auditor of state shall issue his warrant drawn on the gasoline fund in payment thereof and the same shall be paid in the same manner and from the same fund as those refunds authorized in section 5093-a8.

If any distributor of gasoline shall fail to remit on or before the twentieth of each month to the treasurer of state to cover the license fees due on that date, a penalty of ten per cent of the amount thereof shall immediately accrue and become due and payable when such license fees are paid or collected. If any such distributor shall fail to pay such license fees and penalties within thirty days after the date due, the attorney general shall bring appropriate action for the recovery of such license fees and penalty; and in addition whenever any licensed distributor fails to render the prescribed reports, renders a false report to the treasurer, or fails to pay the license fee due within the prescribed time, the treasurer of state may revoke the license of such distributor, and any such license so revoked shall not be renewed unless the treasurer of state is satisfied that the applicant therefor will in the future comply with the requirements of this chapter. Neither this act (42 G. A., ch. 248) nor any of its pro-

visions shall apply to foreign or interstate commerce. (41 G. A., ch. 6, Sec. 5; 42 G. A., ch. 248, Sec. 4.)

Referred to in Sec. 5093-*a7*.

5093-*b1*. Tank Car Reports—Inspection of Books.—Every railroad company, or other person, firm or corporation transporting gasoline in tank cars or other receptacles from without the state consigned and delivered to any point within the state shall, through its local agent or agents, on or before the tenth of each calendar month, forward to the treasurer of state a report on forms furnished by said treasurer, for each station or place of destination, showing the name of the railroad or other carrier, the date of unloading and identification of each tank car or other conveyor of gasoline received at the station or place during the preceding calendar month, the name of the consignor and the name of the consignee. The books, records and reports of each railroad or other carrier pertaining to the transportation and delivery of gasoline as herein defined shall be subject to inspection during ordinary business hours by the treasurer or his representatives. (42 G. A., ch. 248, Sec. 5.)

Referred to in Sec. 5093-*a7*.

5093-*a6*. Books Open to Inspection.—The books, records, papers, receipts, invoices and equipment of any distributor which pertain to the sale of gasoline shall be subject to inspection at any time during ordinary business hours by the treasurer or his representatives, but any information gained by the treasurer of state or such representative by such investigation, shall be confidential and any person divulging such information shall be deemed guilty of a misdemeanor and upon conviction thereof shall be liable to a fine not exceeding one thousand dollars. (41 G. A., ch. 6, Sec. 6.)

5093-*a7*. Misdemeanor—Penalty.—Any distributor, railroad or transportation company or agent of a railroad or transportation company who shall fail to make, or refuse to make the reports or certificate to the treasurer as herein prescribed, or shall refuse to

permit the treasurer to examine the books, records, papers, receipts, invoices or equipment of such distributor pertaining to the sale of gasoline, or who shall make any incomplete, false or fraudulent return hereunder, or shall in any manner violate the provisions of sections 5093-*a*4, 5093-*a*5 and 5093-*b*1 hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer thereof shall be deemed guilty of a misdemeanor and shall each be subject to punishment therefor. (41 G. A., ch. 6, Sec. 7; 42 G. A., ch. 248, Sec. 6.)

5093-*a*8. Reimbursement—Procedure—False Statement.—Any person who shall buy or use any gasoline for the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes, motor boats, airplanes or aircraft, motor vehicles, trucks and tractors owned and operated by the state of Iowa, or by a municipality for municipal purposes within the state, or who shall purchase or use any gasoline for cleaning or dyeing, or for any other commercial use except for propelling motor vehicles operated in whole or in part upon the public highways of the state or upon the streets of any city or town in the state, shall be reimbursed and repaid the amount of such license fee paid by him upon presenting to the treasurer of state a statement accompanied by the original invoices showing such purchase which statement shall set forth the total amount of gasoline so purchased, paid for and used by such consumer other than for propelling motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state or upon the streets of any city or town of this state and the treasurer of state shall, upon the presentation of such invoice, cause to be repaid from the funds operated* by the

* According to enrolled bill.

license fee collected on the use of gasoline as herein provided, the amount of such license fee paid by such consumer on gasoline used for purposes other than propelling motor vehicles as hereinbefore provided. All applications for refunds or reimbursements as provided for in this chapter shall be filed with the treasurer of state on blank forms provided by him for that purpose within ninety days after the date on which such gasoline shall have been purchased as shown by the invoice. Any person, firm or corporation who shall make any false statement in connection with an application for the refund of any money or license fee as herein provided or who shall collect or cause to be repaid to him or any person, any such fees, without being entitled to the same under the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed one thousand dollars. (41 G. A., ch. 6, Sec. 8; 42 G. A., ch. 248, Sec. 7.)

Referred to in Secs. 5093-*a*5, 5093-*a*10.

5093-*a*9. Distribution of Proceeds.—License fees collected under the provisions of this chapter shall be distributed and disbursed as follows: One-third to the primary road fund. One-third to the county road fund and one-third to the township road fund, which county and township funds, the treasurer shall apportion among the counties of the state in the same ratio that the area of the county bears to the total area of the state, and on the first days of each month shall remit to the treasurer of each county the apportionments for its county and township road fund. The county treasurer, thereupon shall apportion such township road fund among the townships of the county in the same ratio that the number of miles of township roads in the township bears to the total number of miles of township roads within the county, and shall remit quarterly to the clerk of each township the apportionment for its township road fund. (41 G. A., ch. 6, Sec. 9.)

5093-*a*10. Refunds quarterly.—The refunds provided for in section 5093-*a*8 shall be made, quarterly, by the treasurer of state. Claims for refunds shall be made on blanks provided by the treasurer of state and under such proofs under oath as he may prescribe. The auditor of state shall issue his warrants for refunds certified to him by the treasurer of state. (41 G. A., ch. 6, Sec. 10.)

5093-*a*11. Employees—Appropriation.—The treasof state is authorized to employ such clerical and other help as may be needed to carry out the provisions of this chapter, the number and compensation of such employees to be fixed by the executive council.

There is hereby appropriated out of the money received under the provisions of this chapter sufficient funds to pay for help employed by the treasurer in enforcing the chapter and for making such refunds as are provided for herein. (41 G. A., ch. 6, Sec. 10-*a*1.)

5093-*a*12. Act Separable.—If any part of this chapter is held to be unconstitutional or invalid by the courts, such decision shall not affect the validity of the remaining portions of this chapter. (41 G. A., ch. 6, Sec. 11; 42 G. A., ch. 248, Sec. 9.)

Chapter 251-A1, Code of Iowa, 1931, is as follows:

Motor Vehicle Fuel Tax.

5093-*a*1. Amount of Fee.—A license fee of two cents per gallon or fraction of a gallon is hereby imposed on all motor vehicle fuel used or otherwise disposed of in this state for any purpose whatsoever. Any person using motor vehicle fuel within the state shall be liable for the fee herein provided for unless the same shall have been previously paid. License fees shall be collected and disposed of in the manner hereinafter provided. (C'27, Sec. 5093-*a*1; 44 G. A., ch. 108.)

Additional fee of one cent, Sec. 4755-*b*38.

5093-*a*2. Definition of Terms.—The term "distributor" as used in this chapter shall mean any person who

brings into the state or who produces, refines, manufactures or compounds within the state any motor vehicle fuel to be used within the state or sold or otherwise disposed of by him within the state for use in the state. Provided, however, a person coming into the state traveling by motor vehicle may transport, for his own use, in the ordinary motor vehicle fuel tank attached to and forming a part of such motor vehicle, not more than twenty gallons of motor vehicle fuel without being considered a distributor.

The term "person" includes individual, partnership, corporation and association.

The term "treasurer" means the treasurer of the state of Iowa.

"Motor vehicle fuel" shall mean and include any substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine and kept for sale or sold for that purpose, except the products commonly known as kerosene and/or distillate or petroleum products of lower gravity (Baume scale) when not used to propel a motor vehicle or for compounding or combining with any motor vehicle fuel. (C'27, Sec. 5093-*a*2; 44 G. A., ch. 108.)

5093-*a*3. Sale Price Placard—Misdemeanor—Penalty.—Any person who sells or offers for sale at retail motor vehicle fuel in this state, shall keep posted in a conspicuous place, most accessible to the public, at his place of business, a placard showing the total sale price per gallon including license fee, of all grades of motor vehicle fuel sold, said placard to have printed thereon the words "state license fee included."

When quantity discounts or rebates are allowed, such facts shall be shown on the placard in the manner designated by the treasurer of state in regulations promulgated by him. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed one

hundred dollars or imprisonment in the county jail for a period of not to exceed thirty days. (C27, Sec. 5093-*a*3; 44 G. A., ch. 108.)

5093-*a*4. Certificate—License.—Each distributor now engaged in business as herein defined, shall within thirty days after this chapter becomes effective, and every distributor desiring to engage in such business shall, before beginning the sale or manufacture of motor vehicle fuel in this state, file a duly acknowledged certificate with the treasurer of state on forms prescribed and furnished by him, which shall contain the name under which such distributor is transacting business within the state of Iowa, and the principal place of business of such distributor. If such distributor is a firm or copartnership, the certificate shall also contain the names and addresses of the several persons constituting same, and if a corporation or municipal subdivision, the corporate name under which it is authorized to transact business, the names and addresses of its principal officers, resident general or managing agent and attorney in fact.

Each distributor now engaged in business as herein defined, shall, within sixty days after this chapter becomes effective, and any person or persons desiring to engage in such business shall, before beginning the manufacture or sale of motor vehicle fuel within the state, procure a license from the treasurer of state permitting said distributor to transact said business within the state of Iowa. The treasurer of state, upon application of any person or persons who has filed the required certificate shall issue such person or persons a license as licensed distributor permitting such person or persons to continue or engage in business as a licensed distributor in the state of Iowa. It shall be unlawful for any distributor to continue or to engage in or to transact the business of a distributor without first having procured a license as required in this section. (C27, Sec. 5093-*a*4; 44 G. A., ch. 108.)

Referred to in Sec. 5093-*a*7.

5093 *c*2. Distributor Requirements. Before any distributor shall engage in business as defined in this chapter, he shall first file with the treasurer of state a statement showing financial responsibility satisfactory to said department, or a corporate surety bond payable to the state of Iowa in the penal sum of one thousand dollars, conditioned that said distributor will pay to the state of Iowa any and all fees required by the law. Said bond or financial statement shall be approved by the treasurer of state. No license shall be issued unless the bond or financial statement, required herein is attached to and delivered to the treasurer of state with the application for said license. If any distributor now engaged in business fails to file the bond, or financial statement, required by this section within thirty days after the effective date thereof, his license shall be revoked. (43 G. A., ch. 29, Sec. 1.)

5093 *a*5. Reports—Remittances—Rebates—Penalties. On or before the twentieth day of each calendar month each distributor of motor vehicle fuel shall file in the office of the treasurer of state, at Des Moines, Iowa, a duly acknowledged report on forms prescribed and furnished by said treasurer, showing the total number of gallons of motor vehicle fuel and or of any substance or material imported into the state for the purpose of manufacturing, mixing, blending or compounding motor vehicle fuels as defined in this chapter imported by him during the preceding calendar month, the date of receipt, unloading point, tank car identification and invoiced gallonage of each and every tank car or other receptacle in which motor vehicle fuel is imported into the state of Iowa. If no importations are made for the preceding calendar month, a report shall be made to that effect on the forms prescribed herein, and in the same manner. At the same time he shall remit to the treasurer the amount of the license fee for such preceding month; provided, however, that in computing said amount a deduction of three per cent of the invoiced gallonage imported may be made for evaporation and loss.

If, after the prescribed license fees are so remitted and paid, any motor vehicle fuel in the possession of a licensed distributor is destroyed by fire, lightning, storm or accident not caused by the fault of such distributor or any employee thereof, before being sold or used by him, upon proper application therefor and proof of such destruction or loss satisfactory to the treasurer of state; the said treasurer is authorized to certify to the amount of the license fees so paid thereon to the auditor of state as a refund. The auditor of state shall issue his warrant drawn on the motor vehicle fuel fund in payment thereof and the same shall be paid in the same manner and from the same fund as those refunds authorized in section 5093-*a*8.

If any distributor of motor vehicle fuel shall fail to remit on or before the twentieth of each month to the treasurer of state to cover the license fees due on that date, a penalty of ten per cent of the amount thereof shall immediately accrue and become due and payable when such license fees are paid or collected. If any such distributor shall fail to pay such license fees and penalties within ten days after the date due, the attorney general shall bring appropriate action for the recovery of such license fees and penalty; and in addition whenever any licensed distributor fails to render the prescribed reports, renders a false report to the treasurer, or fails to pay the license fee due within the prescribed time, the treasurer of state may revoke the license of such distributor, and any such license so revoked shall not be renewed unless the treasurer of state is satisfied that the applicant therefor will in the future comply with the requirements of this chapter. Neither this act (42 G. A., ch. 248) nor any of its provisions shall apply to foreign or interstate commerce. (C'27, Sec. 5093-*a*5; 43 G. A., ch. 29, Sec. 2; 44 G. A., ch. 108.)

Referred to in Sec. 5093-*a*7.

5093-*b*1. Tank Car Reports—Inspection of Books.—Every railroad company, or other person, firm or cor-

poration transporting motor vehicle fuel in tank cars or other receptacles from without the state consigned and delivered to any point within the state shall, through its local agent or agents, on or before the tenth of each calendar month, forward to the treasurer of state a report on forms furnished by said treasurer, for each station or place of destination, showing the name of the railroad or other carrier, the date of unloading and identification of each tank car or other conveyor of motor vehicle fuel received at the station or place during the preceding calendar month, the name of the consignor, the name of the consignee, the number of gallons of motor vehicle fuel and or of any substance or material imported into the state for the purpose of manufacturing, mixing, blending or compounding motor vehicle fuels as defined in this chapter. The books, records and reports of each railroad or other carrier pertaining to the transportation and delivery of motor vehicle fuel as herein defined, shall be subject to inspection during ordinary business hours by the treasurer or his representatives. (G 27, Sec. 5093-*b*4; 44 G. A., ch. 108.)

Referred to in Sec. 5093-*a*7.

5093-*a*6. Books Open to Inspection.—The books, records, papers, receipts, invoices and equipment of any distributor which pertain to the sale of motor vehicle fuel shall be subject to inspection at any time during ordinary business hours by the treasurer or his representatives, but any information gained by the treasurer of state or such representative by such investigation shall be confidential and any person divulging such information shall be deemed guilty of a misdemeanor and upon conviction thereof shall be liable to a fine not exceeding one thousand dollars. (G 27, Sec. 5093-*a*6; 44 G. A., ch. 108.)

5093-*a*7. Misdemeanor—Penalty. Any distributor, railroad or transportation company or agent of a railroad or transportation company who shall fail to make, or refuse to make the reports or certificate to

the treasurer as herein prescribed, or shall refuse to permit the treasurer to examine the books, records, papers, receipts, invoices or equipment of such distributor pertaining to the sale of motor vehicle fuel, or who shall make any incomplete, false or fraudulent return hereunder, or shall in any manner violate the provisions of sections 5093 *a*4, 5093 *a*5 and 5093 *b*1 hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer thereof shall be deemed guilty of a misdemeanor and shall each be subject to punishment therefor." (C'27, Sec. 5093 *a*7; 44 G. A., ch. 108.)

5093 *a*8. Reimbursement Procedure. False Statement. Any person who shall buy or use any motor vehicle fuel for the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes, motor boats, airplanes or aircraft, motor vehicles, trucks and tractors owned and operated by the state of Iowa, or by a municipality for municipal purposes within the state, or who shall purchase or use any motor vehicle fuel for cleaning or dyeing, or for any other commercial use except for propelling motor vehicles operated in whole or in part upon the public highways of the state or upon the streets of any city or town in the state, shall be reimbursed and repaid the amount of such license fee paid by him, upon presenting to the treasurer of state a statement accompanied by the original invoices showing such purchase which statement shall set forth the total amount of motor vehicle fuel so purchased, paid for and used by such consumer other than for propelling motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state or upon the streets of any city or town of this state and the treasurer of state shall, upon the presentation of such invoice, cause to be repaid from

the funds collected hereunder, the amount of such license fee paid by such consumer on motor vehicle fuel used for purposes other than propelling motor vehicles as hereinbefore provided. All applications for refunds or reimbursements as provided for in this chapter shall be filed with the treasurer of state on blank forms provided by him for that purpose within ninety days from the date on which such motor vehicle fuel shall have been purchased as shown by the invoice. Any person, firm or corporation who shall make any false statement in connection with an application for the refund of any money or license fee as herein provided or who shall collect or cause to be repaid to him or any person any such fees, without being entitled to the same under the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed one thousand dollars. (C'27 Sec. 5093-*a*8; 44 G. A., chs. 108, 124.)

Referred to in Secs. 5093-*a*5, 5093-*a*10.

5093-*a*9. Distribution of Proceeds.—License fees collected under the provisions of this chapter shall be distributed and disbursed as follows: One-third to the primary road fund, two-thirds to the secondary road construction fund of the several counties of the state. The treasurer shall apportion said two-thirds portion among the counties of the state in the ratio that the area of each county bears to the total area of the state, and shall, on the first day of each month, remit to the treasurer of each county the amount apportioned to the secondary road construction fund of the county. (C'27, Sec. 5093-*a*9; 43 G. A., ch. 20, Sec. 75.)

5093-*a*10. Refunds Quarterly.—The refunds provided for in section 5093-*a*8 shall be made quarterly by the treasurer of state. Claims for refunds shall be made on blanks provided by the treasurer of state and under such proofs under oath as he may prescribe. The auditor of state shall issue his warrants

for refunds certified to him by the treasurer of state. (C27, Sec. 5093-*a*10.)

5093-*a*11. Employees — Appropriation. — The treasurer of state is authorized to employ such clerical and other help as may be needed to carry out the provisions of this chapter, the number and compensation of such employees to be fixed by the executive council.

There is hereby appropriated out of the money received under the provisions of this chapter sufficient funds to pay for help employed by the treasurer in enforcing the chapter and for making such refunds as are provided for herein, and to pay the cost of postage, equipment, supplies and printing, used by the department. (C27, Sec. 5093-*a*11; 44 G. A., ch. 125.)

5093-*a*12. Act Separable.—If any part of this chapter is held to be unconstitutional or invalid by the courts, such decision shall not affect the validity of the remaining portions of this chapter. (C27, Sec. 5093-*a*12.)

Section 4755-*b*5, Code of Iowa, 1927, is as follows:

4755-*b*5. Refunds.—Where additional right of way has been acquired, or where bridges have been built on the primary roads under the supervision of the highway commission, and paid for out of the county road or bridge funds since April 19, 1919, said county shall be reimbursed for said right of way and said bridges out of the primary road fund within five annual payments from the taking effect of this chapter; the first payment to be made January 1, 1928, and the board of supervisors is authorized to issue certificates anticipating the amount to be received. Said certificates shall not be issued for a period to exceed six years nor to bear an interest rate to exceed five per cent.

The refunds made to any county under this section shall at the option of the board of supervisors of said county be placed to the credit of the county road fund or the county bridge fund. (38 G. A., ch. 237, Sec. 4;

39 G. A., ch. 20, Sec. 1; 39 G. A., ch. 188, Sec. 2; 40 G. A., ch. 84, Sec. 1; C. '24, Sec. 4690; 42 G. A., ch. 101, Sec. 5; 42 G. A., ch. 103, Sec. 1.)

Attempt is here made with great difficulty to apply 42 G. A. ch. 103, Sec. 1, as an amendment to 42 G. A., ch. 101, Sec. 5.

The provision of 42 G. A., ch. 101, Sec. 5, relating to payments made during 1927 has been omitted because purely temporary.

For that part of the amendment relating to the additional tax on gasoline, see Sec. 4755-*b*38.

Sec. 4755-*b*38, Code of Iowa, 1927, is as follows:

4755-*b*38. Gasoline — Additional Tax. — There is hereby levied on all gasoline imported and used within this state a license fee of ~~one cent per gallon, which shall be in addition~~ to the license fee levied by Chapter 251-*a*1. All of the provisions and conditions of said chapter 251-*a*1 relating to the levy, collection or payment of the license fee on gasoline shall apply with equal force to the license fee levied herein. Out of the proceeds of said additional license fee the state highway commission shall, each year, set aside a sufficient amount to pay the portion of the bridge and right of way refund becoming due and payable on January first of the succeeding year. The remainder of the proceeds of said additional license fee shall be credited to the primary road fund. (42 G. A., ch. 103, Sec. 1.)

Section 4755-*b*5, Code of Iowa, 1931, is as follows:

4755-*b*5. Refunds.—Where additional right of way has been acquired or where bridges or culverts have been built on the primary roads under the supervision of the highway commission and paid for out of the county road or bridge funds since April 19, 1919, said county shall be reimbursed for said right of way and said bridges or culverts out of the primary road fund in seven annual payments. Provided, however, in counties where the total refund does not exceed the sum of five thousand dollars, the entire refund shall

be made at the time of the first annual payment. The first payment shall be made January 1, 1928, and the Board of supervisors is authorized to issue certificates anticipating the amount to be received. Said certificates shall not be issued for a period to exceed six years nor to bear an interest rate to exceed five per cent.

The refunds made to any county under this section shall, upon their receipt by the county, be placed to the credit of the secondary road construction fund unless heretofore pledged.

Payments already made under the section for which this section is a substitute shall be readjusted by the highway commission to conform herewith. (C'24, Sec. 4690; C27, Sec. 4755-*b*5; 42 Ex G. A., ch. 3; 43 G. A., ch. 20, Sec. 74.)

The precautionary nonrepeal clause, being the last sentence of Sec. 1, ch. 3, 42 Ex G. A., has been omitted.

Section 4755-*b*38, Code of Iowa, 1931, is as follows:

4755-*b*38. Motor Vehicle Fuel—Additional Tax.—There is hereby levied on all motor vehicle fuel imported and used within this state a license fee of one cent per gallon, which shall be in addition to the license fee levied by chapter 251-*a*1. All of the provisions and conditions of said chapter 251-*a*1 relating to the levy, collection or payment of the license fee on motor vehicle fuel shall apply with equal force to the license fee levied herein. Out of the proceeds of said additional license fee the state highway commission shall, each year, set aside a sufficient amount to pay the portion of the bridge, culvert and right of way refund becoming due and payable on January first of the succeeding year. The remainder of the proceeds of said additional license fee shall be credited to the primary road fund. (C27, Sec. 4755-*b*38; 42 Ex G. A., ch. 3; 44 G. A., ch. 108.)

Two-cent motor vehicle fuel tax, Sec. 5093-*a*1.

The decree was entered dismissing the bill of complaint, on final hearing, on March 29, 1933. The application for appeal was presented to the trial court on June 17, 1932.

The cases which sustain the jurisdiction of the Supreme Court to which appeal was taken are:

Interstate Busses Corp. v. *Blodgett*, 276 U. S. 245;
Clark v. *Poor*, 274 U. S. 554;
Smith v. *Wilson*, 273 U. S. 388;
Moore v. *Fidelity & Deposit Co.*, 272 U. S. 317, 320, 321;
Peet Stock Remedy Co. v. *McMullen*, 32 Fed. (2d) 669, (C. C. A. 8).

The plaintiff and appellant, Mona Motor Oil Company, is making this statement in conformity with Rule XII of the rules of the Supreme Court of the United States.

MONA MOTOR OIL COMPANY,
By GEO. S. WRIGHT,
ADDISON G. KISTLE,
PAUL E. ROADIFER,
Its Attorneys.

We, Edward L. O'Connor, Attorney General, L. W. Powers and Clair Hamilton, attorneys for the defendants, appellees, in the above entitled cause, hereby acknowledge service of the above statement, both for ourselves and for the above named defendants, appellees, and copy of said statement in said cause. All done this 17th day of June, 1933.

EDWARD L. O'CONNOR,
C. E. HAMILTON,
L. W. POWERS,
Attorneys for Defendants-Appellees.